

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN RE:)	CASE NO. 05-83036
)	CHAPTER 13
)	
JAMES A. HOLTZEN and)	MOTION FOR RELIEF
LINDA J. HOLTZEN,)	<u>FROM AUTOMATIC STAY</u>
)	
Debtors.)	

COMES NOW the applicant, Wells Fargo Bank, N.A. ("Wells Fargo"), and in support of its motion to obtain relief from the automatic stay of 11 U.S.C. Section 362(a) to allow it to proceed with foreclosure proceedings in Douglas County, Nebraska, shows the Court as follows:

JURISDICTION

1. This action is brought pursuant to 11 U.S.C. Section 362 and Bankruptcy Rules Nos. 4001 and 9013.
2. The above-named debtor filed this proceeding for relief under Chapter 13, Title 11 U.S.C., on or about August 9, 2005.

DEBT AND SECURITY

3. On August 28, 1997, James A. Holtzen and Linda J. Holtzen, executed and delivered a promissory note in writing, in the sum of \$77,600.00, together with interest at the rate of 6.51% per annum, as more particularly set forth in such note.
4. On August 28, 1997, James A. Holtzen and Linda J. Holtzen, to secure the payment of such note, executed and delivered a certain deed of trust in writing, conveying the property commonly known as 7728 Nebraska Ave., Omaha, Nebraska. Such deed of trust was recorded in the office of the Register of Deeds of Douglas County, Nebraska.
5. Wells Fargo is the owner and record holder of the note and deed of trust.
6. The debtors made some payments on the obligation described above but have failed, refused and neglected to make all payments due and owing.

CHAPTER 13 PLAN

7. Pursuant to the debtors' plan, the debtors agreed to make all post-petition monthly payments to Wells Fargo as the same became due outside of the plan.

DEFAULT

8. The debtors have failed, refused and neglected to make the post-petition payments to Wells Fargo on a timely basis and are delinquent for the payments due October 1, 2005 and thereafter.

9. As a result thereof, there is presently due and owing on the note and deed of trust the principal amount of \$64,829.67, plus interest at the rate of 6.51% per annum.

BASIS FOR RELIEF FROM STAY

10. Debtors do not have any equity in and to said real property.

11. Debtors have breached the Chapter 13 plan and lack the ability to meet the obligations due on the note.

12. Debtors have not afforded adequate protection to Wells Fargo to protect its interest in said property.

13. The property is not necessary for an effective reorganization by debtors.

WHEREFORE, Wells Fargo prays that upon hearing of this matter, it be awarded relief from the automatic stay of 11 U.S.C. Section 362(a), that the 10 day stay pursuant to Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure be waived to allow it to immediately proceed with foreclosure proceedings in Douglas County, Nebraska and that its attorney fees and costs in connection with this Motion be approved by the Court.

WELLS FARGO BANK, N.A., Applicant

By: s/Eric H. Lindquist

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Motion for Relief from Automatic Stay was served upon the debtors James A. Holtzen and Linda J. Holtzen, 7728 Nebraska Ave., Omaha, NE 68134, by regular United States mail, postage prepaid, upon the debtors' attorney, Douglas R. Lederer, upon the trustee, Kathleen Laughlin, and upon Patricia Fahey, U.S. Trustee, via electronic notification, this 1st day of December, 2005.

s/Eric H. Lindquist

Eric H. Lindquist